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No. 85-1798

IN THE

Supreme Court of the United States

October Term, 1986

PENNZOIL COMPANY,
Appellant,

v.

TEXACO INC.,
Appellee.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

AMICUS CURIAE BRIEF OF THE BUSINESS COUNCIL OF NEW YORK STATE, INC.; NATIONAL ASSOCIATION OF TEXACO WHOLESALERS; OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (AFL-CIO); TEXAS AFL-CIO; NEW YORK STATE AFL-CIO; AND NEW YORK STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

John Carter Rice
(Counsel of Record)
Rice & Justice
96 South Swan Street,
Albany, New York 12210
(518) 434-8435

ATTORNEYS FOR AMICUS
CURIAE, THE BUSINESS
COUNCIL OF NEW YORK
STATE, INC.

[List of Additional Counsel on Inside Cover]

Gregg R. Potvin
Southmayd, Powell,
Taylor & Bonen
1015 15th Street, N.W.
6th Floor
Washington, D.C. 20005
(202) 797-8822

ATTORNEYS FOR AMICUS CURIAE, NATIONAL ASSOCIATION OF TEXACO WHOLESALERS

John W. McKendree
Law Offices of
John W. McKendree
Creswell Mansion
1244 Grant Street
Denver, Colorado 80203
(303) 861-8906

ATTORNEY FOR AMICUS CURIAE, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (AFL-CIO)

David Van Os
General Counsel
P.O. Box 26946
Austin, Texas 78755
(512) 477-6195

ATTORNEY FOR AMICUS CURIAE, TEXAS AFL-CIO

Richard L. O'Hara
Colleran, O'Hara & Mills, P.C.
267 East Jericho Turnpike
Mineola, New York 11501-2133
(516) 248-5757

ATTORNEYS FOR AMICUS CURIAE, NEW YORK STATE AFL-CIO AND AMICUS CURIAE, NEW YORK STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

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The Business Council of New York State, Inc. ("Business Council"); National Association of Texaco Wholesalers ("NATW"); Oil, Chemical and Atomic Workers International Union, AFL-CIO ("OCAW"); Texas AFL-CIO; New York State AFL-CIO; and New York State Building and Construction Trades Council ("Trades Council"), submit this brief to urge this Court to affirm the decision of the United States Court of Appeals for the Second Circuit.

Each of the signatories to this brief is confident that the issues in this case will be exhaustively and effectively briefed by the parties and, therefore, we will not burden this Court by fully addressing the

merits of this appeal. Nevertheless, we wish to apprise the Court of our interest in this matter and to state our belief that the public interest will be best served by safeguarding Texaco's federal constitutional right to pursue a meaningful appeal in the courts of the State of Texas free of conditions which in this case are both irrational and impossible.

The varied constituencies represented by the organizations submitting this brief include individuals and organizations whose interest could be irreparably and unnecessarily damaged if this Court were to reverse the decision of the Second Circuit upholding the limited injunctive relief granted by the District Court for the Southern District of New York.

The Business Council is a not-for-profit corporation organized and existing under the laws of the State of New York. The Business Council represents over 3,000 individual businesses, including over 100 of the Fortune 500 companies, employing millions of men and women in New York and across the nation. The Business Council not only appeared *amicus curiae* in the court below, but also appeared as an *amicus* in the state appellate court of Texas, where the merits of the $11.12 billion judgment have been argued without any interference from the federal court's limited injunctive relief. In its *amicus* brief to the Texas Court of Appeals, the Business Council urged that "the judgment of the trial court, if not reversed, will create uncertainty and unpredictability in areas of commercial activity that require certainty and predictability for the national economy to flourish." The irreparable damage to Texaco that would result from a reversal of the decision below would adversely affect other members of the Business Council (as well as the members' employees, customers and the general public), which directly and indirectly benefit from the business activity of Texaco.

OCAW is the foremost labor organization in the oil industry. It represents approximately 40,000 employees in the oil industry, including over 5,000 Texaco employees and has in effect over 300 collective bargaining agreements with employers in the oil industry. It is affiliated with the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") and the Texas AFL-CIO which has its headquarters in Austin, Texas. The Texas AFL-CIO is comprised of a large number of industrial and craft unions rooted in the former American Federation of Labor ("AFL") and the Congress of Industrial Organizations ("CIO"). In 1955, these unions merged to become AFL-CIO. Typifying the unions within the Texas AFL-CIO are various local unions of OCAW, the Office of

Professional Employees International Union ("OPEIU"), the International Brotherhood of Electrical Workers ("IBEW"), the International Union of Operating Engineers ("IUOE"), the International Association of Machinists and Aerospace Workers ("IAM"), the United Brotherhood of Carpenters and Joiners of America ("Carpenters"), the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry ("Pipefitters"), and the United Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers ("Boilermakers") — all of whom represent employees within the oil industry. Its sister union, the New York State AFL-CIO has a membership in excess of two million union workers throughout New York State. The purpose of both the Texas AFL-CIO and the New York State AFL-CIO is to represent, through united action, the interests of its membership with respect to significant labor issues that arise within the legislative and judicial branches of government. In this connection, these unions also represent the interests of numerous trustees of pension, annuity and other employee benefit funds. In the past, both have been a party to, or filed *amicus* briefs in, lawsuits involving labor and employment issues of importance to its membership in state and federal courts. Affiliated with the New York State AFL-CIO is the New York State Building and Construction Trades Council, which has a membership of approximately two hundred and fifty thousand workers throughout New York State. The council consists of twenty-two regional area Building and Construction Trades Councils, which effectively represent the majority of the unionized construction workers with the State of New York. The Council's primary objective is to represent, through united action, the interests of working people on significant labor and employment issues in the legislative and judicial branches of government.

Because of the size of the judgment, the outcome of this case will have a tremendous economic effect on the oil industry and labor. The effect of the judgment on labor will extend far beyond the displacement of many thousands of Texaco employees and the adverse impact on many more thousands of former employees. The judgment will undoubtedly have a ripple effect on the livelihoods of thousands of employees of businesses dependent upon or associated with Texaco or its employees. The devastating effects of the judgment on so many working men and women and their families would be especially tragic if it were to occur before there can be full review of issues that are sufficiently serious that the States of New York and Delaware both have appeared as *amicus* in the Texas Court of Appeals to urge reversal because their law was misapplied by the Texas trial judge.

NATW was founded as a non-profit organization in 1974 by small independent marketers of Texaco products. The organization is unaffiliated with Texaco and, indeed, frequently finds itself in an adversarial relationship with Texaco. A primary objective of NATW is to enhance communications regarding problems facing the petroleum industry between its members and agencies of the state and federal governments, Texaco and other petroleum associations. NATW believes the judgment to be wrong — practically, legally and morally — and urges this Court to uphold the federal relief required so that the Texas state courts can have the opportunity to review and reverse that judgment.

Notwithstanding the differing purposes which each of our organizations serves, we are in agreement that the interests we represent, as well as the interests of the nation as a whole, would best be served by ensuring Texaco a meaningful right to pursue its appellate remedies in the courts of the State of Texas, and, if necessary, in this Court. Each of us, therefore, urges that the limited relief granted by the district court and upheld by the Second Circuit, which will in no way interfere with the Texas appellate courts' power and duty to adjudicate Texaco's appeal, represents a reasonable and prudent exercise of federal power.

For these reasons, we respectfully request that this Court recognize the irreparable and irreversible harm that could be done not only to our constituents, but to the interests of the general public. We urge affirmance of the decision below.

Dated: November 4, 1986

Respectfully submitted,

Texas AFL-CIO

By: David Van Os

New York State AFL-CIO; New York State Building and Construction Trades Council

By: Richard L. O'Hara

The Business Council of New York State, Inc.

By: John Carter Rice*

National Association of Texaco Wholesalers

By: Gregg R. Potvin

Oil, Chemical and Atomic Workers International Union (AFL-CIO)

By: John W. McKendree

*Counsel of Record